

Docket No. 372179-338791
US Appln. No. 09/801,908

REMARKS

Claims 1-11 and 13-18 are currently pending in this application. Claims 19 and 20 have been canceled without prejudice. Claims 1, 3-11, 19, and 13-17 have been amended. No new matter has been added. Support for the amendments can be found on pages 4 and 5 of the specification where it is inherent that the invention does not involve encapsulation or caffeine.

The following remarks put the pending claims in condition for allowance. Applicants respectfully request reconsideration and the timely allowance of the pending claims.

35 U.S.C. § 112, Second Paragraph, Rejection

Claims 1, 5-11, 13, 15, and 17 stand rejected under 35 U.S.C. 112, second paragraph for allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

The Office alleges that the term "base" is ambiguous. Applicant's respectfully traverse this rejection. It is clear from the specification and the claims that the term "base" refers to a chemical base or a substance that reacts with acids to form salts. Support for this can be found in that the Markush groups recited in the dependant claims include only chemical bases. Further, the claims all recite a weak base and it is well known in the art that referring to a base as weak refers to the extent of dissociation of a base in water. Thus, the term "base" is not indefinite since it clearly refers to the chemical nature of the substance and not a structure or foundation. Accordingly, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. 112, second paragraph.

Docket No. 372179-338791

US Appln. No. 09/801,908

35 U.S.C. § 103(a) Rejections

35 USC § 103(a) Rejection over Dondi et al.

Claims 1, 2, 5-11, 13, 14, 17, and 18 stand rejected under 35 U.S.C. 103(a) for allegedly being obvious over Dondi et al, U.S. Pat. 5,624,682, (hereinafter "Dondi").

Applicants respectfully traverse this rejection. The claims, as amended, all recite a method of administering a caffeine-free non-encapsulated mixture of ketoprofen and an edible weak base to an animal. Dondi teaches a solution comprising ketoprofen dissolved in polyethylene glycol to which a weak base may be added to control the pH. The solution is then encapsulated in a soft gelatin capsule (see col. 2, lines 10-23). Dondi fails to teach or suggest administering a non-encapsulated mixture of ketoprofen and a weak base to an animal. As such, Dondi fails to render claims 1, 2, 5-11, 13, 14, 17, and 18 obvious and Applicants respectfully request the withdrawal of the rejection based on 35 U.S.C. 103(a) over Dondi.

35 USC § 103(a) Rejection over Daher

Claims 19-20 stood rejected under 35 U.S.C. 103(a) for allegedly being obvious over Daher, U.S. Pat. No. 5,348,745.

In order to expedite examination, these claims have been canceled without prejudice. Therefore, Applicants respectfully request the withdrawal of the rejection based on 35 U.S.C. 103(a) over Daher.

35 USC § 103(a) Rejection over Markson

Claims 1-11 and 13-20 stand rejected under 35 U.S.C. 103(a) for allegedly being obvious over Markson, U.S. Pat. No. 5,900,416, (hereinafter "Markson").

Applicants respectfully traverse this rejection. The claims, as amended, all recite a method of administering a caffeine free non-encapsulated mixture of ketoprofen and an edible weak base to an animal. Markson teaches a method of increasing the solubility of caffeine in water by adding niacinamide and nicotinic acid. An analgesic such as

806108/60/09/01/901

US Appln. No. 09/01/901

ketoprofen can also be added to the caffeine solution. A weak base can also be added to the solution to control the pH. However, Markson fails to teach or suggest administering a caffeine-free mixture of ketoprofen and a weak base to an animal. Indeed, Markson is primarily concerned with administering high levels of caffeine (see col. 1, lines 4-14). Thus, Markson effectively teaches away from the present invention which is drawn to caffeine free treatment. Consequently, Markson fails to render the invention obvious and Applicants respectfully request the withdrawal of the rejection based on 35 U.S.C. 103(a) over Markson.

